

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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McKESSON INFORMATION
SOLUTIONS, INC.,

Plaintiff,

v.

BRIDGE MEDICAL, INC.,

Defendant.

NO. CIV. S-02-2669 FCD KJM

MEMORANDUM AND ORDER

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This matter is before the court on defendant Bridge Medical, Inc.'s ("defendant") motion to re-tax cost bill. The Clerk filed the taxed cost bill on November 29, 2006, in the amount of \$20,487.32. A minute order issued in conjunction with the cost bill outlining how it was taxed. (Docket #728.) Defendant now moves to re-tax the cost bill. (Docket #729.)

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1 **A. Costs Initially Taxed**

2 The court initially taxed costs as follows:

3 **1. Fees for transcripts - \$16,755.04**

4 Defendant requested \$52,436.99 in costs for transcripts.
5 However, pursuant to Local Rule 54-292(3) and 28 U.S.C. § 1920(2)
6 costs were allowed for only one hard copy of a reporter's
7 transcript. If an invoice listed the production of an "original
8 and one copy" the amount submitted was divided in half.
9 Appearance fees, non-appearance fees, special handling charges,
10 charges for videotapes of the depositions, and other related
11 video costs of the depositions were not allowed pursuant to the
12 above rule and statute. Additionally, any transcript costs for
13 pretrial conferences, the Markman Hearing, and the daily
14 transcripts of the court trial were not allowed as such
15 transcripts are considered a convenience to the parties, and
16 costs are not customarily awarded for these transcripts.

17 **2. Fees for witnesses - \$502.28**

18 Defendant requested \$3,994.29 in witness fees. The fees for
19 witnesses were taxed pursuant to 28 U.S.C. § 1821(2)(b), (c)(2)(3)
20 and (d)(1) and (2). Under the statute, the amounts allowable are
21 \$40.00 a day for an appearance fee at trial, a subsistence
22 allowance of \$153.00 per day, and travel costs (for out of area
23 witnesses). The costs allowed for witness James Sheridan's trial
24 appearance were an attendance fee and subsistence allowance.
25 While the witness traveled from out of the area, the submitted
26 documentation did not contain a breakdown of the costs incurred,
27 i.e. airline, taxis, mileage, etc., and as such, his travel costs
28 were not awarded. All costs claimed for witness Lawrence

1 Fagan's trial appearance were allowed. No allowance was made for
2 witnesses H. Vincent Poor's appearance at the Markman Hearing as
3 his appearance was not for purposes of the trial. No allowance
4 was made for witnesses Vandall, Pure or Hendrickson since no
5 appearance was actually made by these witnesses at the Markman
6 Hearing or trial.

7 **3. Fees for copies - \$3,230.00**

8 Defendant requested \$95,930.64 in copy fees for
9 exemplifications and copies of papers necessarily obtained for
10 use in the case. The court, as a normal practice, limits costs
11 on copy fees to trial exhibits only and costs were taxed pursuant
12 to 28 U.S.C. § 1920(1) and (4), accordingly. To ascertain the
13 relevant costs, the submitted documentation was reviewed for
14 copying costs corresponding to the dates of trial. The costs
15 allowed were the itemized costs listed as trial exhibits.

16 **4. Other costs - \$0.00**

17 Defendant requested \$57,523.07 in "Other Costs." No
18 allowance was made for these costs. The costs submitted appear
19 to be a variety of production costs in relation to the
20 preparation of exhibits and/or slide presentations which are not
21 specifically allowable pursuant to statute or otherwise
22 customarily awarded.

23 **B. Costs Re-Taxed**

24 After review of the briefing submitted on the motion to re-
25 tax, and considering Magistrate Judge Mueller's order of June 3,
26 2004, requiring the filing of certain video tutorials for the
27 Markman Hearing, the court hereby GRANTS IN PART defendant's
28 motion. The court will award certain costs related to the

1 Markman Hearing as the hearing was an integral part of this
2 action which assisted in streamlining the issues for purposes of
3 the dispositive motions and trial. E.D. Cal. L.R. 54-292(11)
4 (permitting award of costs by the court for "other items" "in the
5 interest of justice"). Additional costs, in the amount of
6 \$8,789.03, shall be allowed in relation to the Markman Hearing as
7 follows:

8 **1. Fees for transcripts - \$2,307.05**

9 Costs for the transcripts of the Markman Hearing in the
10 amount of \$2,307.05 will be allowed.

11 **2. Fees for witnesses - \$1,898.82**

12 Witness fees in the amount of \$1,898.82 for the appearance
13 of H. Vincent Poor at the Markman Hearing will be allowed
14 (covering appearance fees for 2 days, subsistence fee of \$153.00
15 for 2 days, airfare and taxis costs).

16 **3. Fees for copies - \$1,940.76**

17 Costs for copies of the exhibits used at the Markman Hearing
18 in the amount of \$1,940.76 will be allowed. Said amount was
19 ascertained from the submitted documentation in the same manner
20 as stated above for the other copying costs. The court shall not
21 allow costs for demonstrative exhibits relating to the Markman
22 Hearing. These items are usually larger versions of smaller
23 copies of exhibits. The submitted documentation is not itemized
24 in such a way for the court to determine otherwise.

25 **4. Other costs - \$2,642.40**


26 Production costs and copies of the tutorial relating to the
27 Markman Hearing in the amount of \$2,642.40 will be allowed in
28 light of Magistrate Judge Mueller's June 3, 2004 order.

1 Except as noted above, no further allowances are made and
2 the court AFFIRMS the previously allowed amounts. The total
3 amended award for costs is \$29,276.35.

4 The court directs the Clerk to issue an amended taxed cost
5 bill in accordance with this order.

6 IT IS SO ORDERED.

7 DATED: April 17, 2007

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11 FRANK C. DAMRELL, JR.
12 UNITED STATES DISTRICT JUDGE
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